

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

JOHN ERIC SIMMONS, )  
                      )  
Plaintiff,         )  
                      )  
v.                  )                   CASE NO. CV408-239  
                      )  
PRISON HEALTH SERVICES and )  
COLONEL MCARTHUR HOLMES, )  
                      )  
Defendants.        )  
                      )

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O R D E R

Before the Court is the Magistrate Judge's Report and Recommendation (Doc. 35), to which objections have been filed (Docs. 42, 43). After a careful de novo review of the record, the Court finds Plaintiff's objections to be without merit. Accordingly, the report and recommendation is ADOPTED as the Court's opinion in this case and Plaintiff's complaint is DISMISSED WITH PREJUDICE.<sup>1</sup> Accordingly, the Clerk of Court is DIRECTED to close this case.

While not completely clear in his objections, it appears that Plaintiff is not contesting the Magistrate Judge's conclusion that Plaintiff failed to exhaust his administrative remedies with respect to his claims. (See Doc. 42 ¶ 3 ("The Plaintiff asserts that defendants [are] claiming in their

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<sup>1</sup> As a result, Plaintiff's Motion for Documents and Records at Government Expense (Doc. 41) is DISMISSED AS MOOT.

affidavit that Plaintiff failed to appeal his grievance. The Plaintiff is not arguing the issue whether or not he appeal[ed] his grievance.".) Rather, Plaintiff argues that "defendants failed to follow their own administrative grievance procedures in accordance with their policy . . . when they failed to respond to Plaintiff['s] grievance within five working days as required by law." (Id. ¶ 4.) However, the prison policy is that inmates should receive a response within five days, not that the prison is required to provide one within that timeframe. (Doc. 26, Attach. 7 at 10-12.) Regardless, any delay that Plaintiff experienced in receiving a response cannot cure his failure to appeal the adverse decision. Accordingly, Plaintiff's objection is without merit.

SO ORDERED this 5<sup>th</sup> day of January 2011.



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WILLIAM T. MOORE, JR.  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA